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Caring for Your Coast

Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

43 September 6, 2016

LORI GLASGOW
EXECUTIVE OFFICER

September 06, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 2 TO AMENDED AND RESTATED LEASE AGREEMENT NO.
6121 PARCEL 140V – MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

This Board letter requests approval of Amendment No. 2 to Marina del Rey Amended and Restated Lease No. 6121 (Lease) for Parcel 140 (Admiralty Apartments) that readjusts the Percentage Rents, Annual Minimum Rent and updates General Liability insurance.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed Lease Amendment No. 2 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 2 to Lease No. 6121 pertaining to the readjustment of the Percentage Rents, Annual Minimum Rent, and General Liability insurance for the ten-year period ending May 23, 2026.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey leases generally provide for the periodic review of leasehold rents to ensure that the percentage rents payable to the County are maintained at current Fair Market Rental Value levels and the amount of general liability insurance is adequate to protect County's interests.

Proposed Amendment No. 2 to Marina del Rey Lease No. 6121 for Parcel 140 (Lease) requires the adjustment of the Percentage Rents, Annual Minimum Rent, and general liability insurance on May 23, 2016 (2016 First Decennial Renegotiation Date) and every tenth anniversary thereafter.

Effective as of May 23, 2016, Lease Amendment No. 2 would adjust the Percentage Rents and Annual Minimum Rent to the Fair Market Rental Value, and would update the general liability insurance as follows:

- Percentage Rents for apartments, hotel and/or motel accommodations, house trailers, meeting rooms, and rental of land and/or water or facilities for activities not otherwise provided for in this section such as but not limited to television and/or motion pictures are increased from 10.5% to 11%. There is no change for the other percentage rent categories;
- The new Annual Minimum Rent is \$467,036 payable in monthly installments of \$38,920 each;
- Amendment No. 2 incorporates changes to the miscellaneous insurance provisions. There are no adjustments to the amount of general liability insurance.

Implementation of Strategic Plan Goals

The recommended action will keep County's percentage rents at Parcel 140 comparable to other Marina del Rey leaseholds in fulfillment of the Strategic Plan Goal No. 1 (Operational Effectiveness/Fiscal Sustainability).

FISCAL IMPACT/FINANCING

Proposed Amendment No. 2 is projected to yield an additional \$31,592 in leasehold rent revenue to the County in Fiscal Year 2016-2017 Budget. The Amendment will increase Annual Minimum Rent from \$441,914 to \$467,036 based on 75% of the total average annual rent payable by the Lessee to the County over the three years prior to May 23, 2016.

Operating Budget Impact

Upon your Board's approval of proposed Amendment No. 2 to the Lease, the Department of Beaches and Harbors will receive approximately \$31,592 in annual increases in leasehold rent revenue. The annual increase received from Fiscal Year 2016-17 is budgeted in the Department's Fiscal Year 2016-17 Final Adopted Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Marina del Rey Parcel 140, commonly known as Admiralty Apartments, is improved with

(1) a four story apartment building containing 172 residential units, totaling 370,300 gross square feet (approximately 211,130 net rentable square feet) over two levels of parking, and (2) a one-story clubhouse. Other ancillary improvements include a swimming pool, spa, steam room, sauna, fitness center, business center, gym, movie theater, parking area containing 380 parking spaces, dog run, bike storage & two rooftop decks, walkways, landscaping.

This proposed Amendment No. 2 has been approved as to form by County Counsel. At its meeting of August 10, 2016, the Small Craft Harbor Commission unanimously endorsed the Director's recommendation that your Board approve and execute the proposed Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed lease Amendment No. 2 is categorically exempt from the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services or projects from your Board's approval of Amendment No. 2.

CONCLUSION

Please have the Chair of your Board sign all three copies of the Amendment No. 2, and have the Executive Officer of the Board return two (2) executed copies, as well as an adopted-stamped copy of this letter to the Department of Beaches and Harbors, retaining a copy for your records. Should you have any questions please contact Natasha Robinson at (310) 306-6144 or NRobinson@bh.lacounty.gov.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gary Jones', with a stylized, cursive script.

GARY JONES

Director

GJ:BL:SP:MR:nr

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

**AMENDMENT NO. 2 TO AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 140V – MARINA DEL REY
(LEASE NO. 6121)**

THIS LEASE AMENDMENT NO. 2 ("Amendment" or "Amendment No. 2") is made and entered into this 6th day of September, 2016 (the "Effective Date").

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
hereinafter referred to as "County",**

AND

**GOLD COAST APARTMENTS, LLC
a Delaware limited liability company,
hereinafter referred to as "Lessee"**

RECITALS:

WHEREAS, on May, 23, 2006, County and Lessee entered into Amended and Restated Lease Agreement No. 6121 (the "Lease") under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 140V, which Premises are more particularly and legally described in Exhibit "A" attached to and incorporated in the Lease (the "Premises"); and

WHEREAS, County and Lessee entered into Amendment No. 1 on November 12, 2008, to extend the Required Completion Date for the Redevelopment Work (as defined in the Lease) to January 31, 2009, and to make certain other modifications to the Lease; and

WHEREAS, Section 4.4 of the Lease requires renegotiation of the Annual Minimum Rent and Percentage Rates as of May 23, 2016 (2016 First Decennial Renegotiation Date), and on each tenth (10th) anniversary thereafter (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"). The Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value in accordance with the standards established in Section 4.4.1 of the Lease; and

WHEREAS, Section 9.6 of said Lease provides that the amounts of liability insurance required by this Section shall be subject to renegotiation as of each fifth (5th) anniversary of May 23, 2006; and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the same meanings given such terms in the Lease; and

6121 Supplement No. 17

WHEREAS, the parties hereto have reached an agreement with respect to the required adjustments which are to apply for the ten (10) year period effective as of May 23, 2016, and wish to amend the Lease as set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof, and the mutual agreements, covenants and restrictions contained herein, the parties agree as follows:

1. **Percentage Rent.** Effective as of May 23, 2016 , Section 4.2.2(c) of the Lease is deleted and replaced with the following:

"(c) ELEVEN percent (11%) of Gross Receipts or other fees charged for the occupancy of structures and other facilities including but not limited to (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, and (5) rental of land and/or water or facilities for activities not otherwise provided for in this section such as but not limited to television and/or motion pictures."

2. **Adjustments to Annual Minimum Rent.** Effective as of May 23, 2016, Section 4.2.3 is deleted and replaced with the following:

4.2.3 As of May 23, 2016, the new Annual Minimum Rent is \$467,036 payable in monthly installments of \$38,920 each.

As of the 2016 First Decennial Renegotiation Date (May 23, 2016), and thereafter each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the total annual rent (i.e., the total Monthly Minimum Rent and Percentage Rent), payable by Lessee to County under Section 4.2 of this Lease during the thirty six (36) months period immediately preceding the Adjustment Date.

Notwithstanding any contrary provision hereto, in no event shall the Annual Minimum Rent be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date.

3. **Retroactive Rent and Interest.** In conformance with the Lease Section 4.4.5, Lessee shall pay to County, within seven (7) days following the Effective Date of the Amendment No.2, the difference, if any, between (a) the Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. County shall further be entitled to interest, compounded monthly, on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid, at the following rates:

- (i) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller (County Pool Rate); and
- (ii) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "Prime Rate") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

No late fee shall be payable under Lease Section 4.5 with respect to any underpayment of rent retroactively readjusted pursuant to the Lease Section 4.4.5 as long as Lessee pays to County any such rent underpayment and accrued interest within the seven (7) day period prescribed in the Lease Section 4.4.5.

4. **Security Deposit.** Effective as of May 23, 2016, the first sentence of Lease Section 7.1 is deleted and replaced with the following:

"Lessee shall deliver to and maintain with County a security deposit (the "Security Deposit") in an amount equal to the sum of two (2) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent during the Term of this Lease). Lessee shall adjust its Security Deposit within thirty (30) days after receipt of the written notification for each adjustment of the Annual Minimum Rent.

5. **Insurance.** Per Los Angeles County Chief Executive Office Risk Management Division, no adjustments to the amounts of Liability Insurance is recommended for the 2016 First Decennial Renegotiation.

Effective as of May 23, 2016, new Section 9.8 is added to the Lease:

"Lessee shall not be required to indemnify, defend or hold County harmless with respect to the existence of any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvements as long as (I) such Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees."

6. **Counterparts.** This Amendment may be signed in counterparts. Each counterpart represents an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.

7. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby. In the event of a conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

(Signature page follows)

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

THE COUNTY OF LOS ANGELES

By: Hilda F. Solis
Chair, Board of Supervisors

LESSEE

GOLD COAST APARTMENTS, LLC,
A Delaware limited liability company

By: Golden Pacific, LLC,
A Delaware limited liability company

Its: Managing Member

Michael Pashaie
Michael Pashaie, Manager

By: Jade Pacific, LLC,
A Delaware limited liability company

Its: Managing Member

David Taban
David Taban, Manager



ATTEST:

LORI GLASGOW,
Executive Officer - Clerk of the Board of Supervisors

By: Lachelle Smitherman
Deputy

I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

LORI GLASGOW
Executive Officer
Clerk of the Board of Supervisors

By: Lachelle Smitherman
Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By: Mary C. Wickham
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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SEP 06 2016

Lori Glasgow
LORI GLASGOW
EXECUTIVE OFFICER

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 140V

Parcels 421 to 424 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Registrar-Recorder of said County.

Excepting therefrom that portion thereof within the following described boundaries:

Beginning at the northwesterly terminus of a curve concave to the west, having a radius of 24 feet, tangent to the northeasterly boundary of said Parcel 423 and tangent to a line parallel with and 3 feet northwesterly, measured at right angles from the straight line in the southeasterly boundary of said last mentioned parcel; thence southerly along said curve 30.75 feet to the northwesterly line of that certain parcel of land described as Parcel A in a resolution by the Board of Supervisors of said County, setting aside County-owned property for Admiralty Way, recorded as Document No. 3149, on March 22, 1967, in Book D3591, page 377, of Official Records, in the office of said Registrar-Recorder; thence southwesterly and southeasterly along the northwesterly and southwesterly lines of said certain parcel of land to said curve; thence southwesterly along said curve 2.00 feet to said parallel line; thence southwesterly along said parallel line 157.28 feet to a curve concentric with and 3 feet northwesterly, measured radially, from that certain 1040 foot radius curve in the southeasterly boundary of said Parcel 422; thence southwesterly along said concentric curve and its southwesterly continuation 179.61 feet to the southwesterly line of said Parcel 421; thence southeasterly along said last mentioned southwesterly line 3.05 feet to the southerly corner of said last mentioned parcel; thence northeasterly along the southeasterly boundaries of said Parcels 421 and 422 to the most southerly corner of said Parcel 423; thence northeasterly, northerly and northwesterly along the southeasterly, easterly and northeasterly boundaries of said last mentioned parcel to the point of beginning.

Reserving and excepting unto the County of Los Angeles a right of way for access and harbor utility purposes in and across that portion of above described parcel of land which lies within the northwesterly 20 feet thereof.

Also reserving and excepting unto the County of Los Angeles a right of way for storm drain and harbor utility purposes in and across that portion of above described parcel of land which lies within the southeasterly 10 feet of the northwesterly 30 feet thereof.

Also subject to any and all easements of record as the same now exists.

DESCRIPTION APPROVED

January 19, 1979

STEPHEN J. KOONCE

County Engineer

By Agnes I. Adams Deputy